

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ZACKARIAH JEREMIAH BENNETT,

11 Plaintiff,

12 v.  
13 KING COUNTY JAIL HEALTH  
14 SERVICES DEPARTMENT, et. al.,

Defendants.

CASE NO. C12-1931-JCC-JPD

ORDER DENYING PLAINTFF'S  
MOTION FOR APPOINTMENT OF  
COUNSEL

15 This matter comes before the Court on the order of the Honorable James P. Donohue,  
16 U.S. Magistrate Judge, denying Plaintiff Zackariah Bennett's motion for appointment of counsel  
17 (Dkt. No. 25) and Bennett's objections to that order and request that this Court review his motion  
18 *de novo* (Dkt. No. 27). Having thoroughly considered Bennett's motion and objections, and the  
19 relevant record, the Court hereby AFFIRMS the Magistrate Judge's denial of Bennett's motion  
20 for the reasons explained herein.

21 Bennett, a prisoner incarcerated at the King County Correctional Facility, proceeds *pro se*  
22 and *in forma pauperis* in this 42 U.S.C. § 1983 lawsuit against the King County Jail Health  
23 Services Department ("JHS") and its supervisor, Richard Pennington. (Dkt. No. 5.) Bennett  
24 alleges that Defendants, in denying him pain medications and specialist care, have exhibited  
25 "deliberate indifference" to his "considerable" abdominal and back pain in violation of the  
26 Eighth Amendment. (Dkt. No. 8 at 1.)

1       In January, Bennett filed a motion to enjoin Defendants from denying him “proper  
 2 medication.” (Dkt. No. 10.) The Magistrate Judge issued a report recommending that the Court  
 3 deny the motion because Bennett failed to demonstrate (1) a likelihood of success on the merits  
 4 of his claim, (2) a likelihood of irreparable injury absent injunctive relief, (3) that the balance of  
 5 hardships favored him, and (4) that the requested injunctive relief would advance the public  
 6 interest. (Dkt. No. 22.) The Court informed Bennett that he had twenty-one days to file  
 7 objections to the Report and Recommendation. (Dkt. No. 22-1 at 1.) Bennett did not file any  
 8 objections. This Court adopted the Report and Recommendation and denied Bennett’s motion for  
 9 injunctive relief. (Dkt. No. 26.)

10       Bennett also moved for appointment of counsel. (Dkt. No. 21.) The Magistrate Judge  
 11 denied the motion (Dkt. No. 25), finding that Bennett had not shown “exceptional  
 12 circumstances,” *i.e.*, a likelihood of success on the merits and an inability to articulate his claims  
 13 *pro se* in light of the complexity of the legal issues involved. *See Wilborn v. Escalderon*, 789  
 14 F.2d 1328, 1331 (9th Cir. 1986). This Court agrees. The Report and Recommendation on  
 15 Bennett’s motion for a preliminary injunction, which this Court adopted, and to which Bennett  
 16 did not object, discusses at length why Bennett is unlikely to succeed on the merits of his claim.  
 17 The Court will not repeat that analysis here. And Bennett’s filings in this matter to date show that  
 18 the legal issues involved are not complex and that Bennett is capable of articulating his claims  
 19 *pro se*.

20       Bennett complains that he is being transferred to a new facility and that it could take up  
 21 to two months for him to have regular access to a law library again. Inter-prison transfers are not  
 22 “exceptional circumstances” entitling prisoners to appointment of counsel. If Bennett needs  
 23 additional time to respond to a filing by Defendants or otherwise meet a deadline in light of this  
 24 transfer, he is free to move for an extension of time.

25       Bennett argues that his “‘normal functional status’ has no bearing on [his] claim of  
 26 deliberate medical indifference, as it is [his] pain [and] suffering that JHS is being indifferent

1 to.” (Dkt. No. 27 at 2.) But the declaration of Dr. Benjamin Sanders shows that Bennett was  
2 denied prescription pain medication not only because he exhibited “normal functional status” but  
3 also because “it is clinically inappropriate to prescribe immediately acting opioid pain  
4 medication for chronic pain management, especially in the setting of chemical dependency, and  
5 [especially where] additional complete blood count and chemistry panel testing [shows] no sign  
6 of bleeding or inflammation.” (Dkt. No. 17 at 4 ¶ 12.) Bennett complains that Defendants have  
7 “ignore[d] [his] multitude of complaints” and that he has not been placed on a pain management  
8 regimen. (Dkt. No. 27 at 2–3.) But the latter is precisely what Dr. Sanders discussed with  
9 Bennett in June of 2012 (Dkt. No. 17 at 4 ¶ 12 (“we discussed non-medication based approaches  
10 to chronic pain management”)) and what the clinicians he has seen since have implemented (*id.*  
11 at 4–6 ¶¶ 13–15 (discussing how clinicians have prescribed Bennett laxatives and fiber, non-  
12 prescription pain medication, and Cymbalta, “an antidepressant which can have some positive  
13 effect on chronic pain”)), 18 (“[n]on-medication-based therapy was also discussed with him”)).  
14 The record belies Bennett’s claims that Defendants have ignored his complaints of pain. That  
15 Defendants subsequently referred Bennett to an outside medical examination at Harborview  
16 Medical Center only reinforces the conclusion that they have taken, and continue to take, his  
17 complaints seriously. Bennett has not shown a likelihood of success on the merits of his Eighth  
18 Amendment deliberate indifference claim.

19 For the foregoing reasons, the Court DENIES Bennett’s motion for appointment of  
20 counsel (Dkt. No. 21).

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DATED this 10th day of April 2013.

John C. Coughenour

John C. Coughenour  
UNITED STATES DISTRICT JUDGE